

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES of AMERICA,

4 -against-

10 Cr. 510

5 ANDREW BARTOK,

6 Defendant.

7 -----x  
8 United States Courthouse  
9 White Plains, New York

10 April 5, 2012

11 B e f o r e:

12 HON. CATHY SEIBEL,  
13 District Court Judge

14 A P P E A R A N C E S:

15 JOHN COLLINS  
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Assistant United States Attorneys

17  
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22  
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24  
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Official Court Reporter

P R O C E E D I N G S

THE CLERK: United States of America against  
Andrew Bartok.

THE COURT: Have a seat everyone. Good morning  
Mr. Collins, Mr. Alberts, Mr. Burke, Ms. Attias and  
Mr. Bartok.

So I have Ms. Attias's motions and the  
Government's response thereto. And, as I understand it, the  
government is in agreement that Count Ten needs to be  
severed not because it's improperly joined but because,  
under Rule 42, a different judge should handle Count Ten?

MR. COLLINS: Your Honor, we believe, after  
consultation with people who are much more knowledgeable and  
smarter in my office, that pursuant to Rule 42(a)(3) the  
most prudent course of action in this case would be to have  
that count severed and then, if it's to be tried at a later  
date, to be tried by a different District Judge.

THE COURT: I don't accept the proposition there  
are smarter people in the office, but, yes, I looked at the  
rule and it seems to me what Count Ten charges is the  
failure to comply with an order, and I don't think that  
necessarily implies disrespect of criticism of the Court,  
and I actually just did a quick search and there is one case  
in the Eastern District of Tennessee saying as much. But if  
both parties are in agreement on something, I'm not going to

1 stand in the way. And it probably is, in an excess of  
2 caution, the prudent course. And, who knows, maybe events  
3 will develop such that the government decides it doesn't  
4 need to pursue that count.

5 MR. COLLINS: We agree, your Honor. We don't,  
6 just to make clear the Government's position, we don't, we  
7 believe that based upon, the only case we can find is the  
8 same one that I believe your Honor is referring to, *Moncier*.

9 THE COURT: Correct.

10 MR. COLLINS: M-O-N-C-I-E-R, which the Sixth  
11 Circuit reversed based upon Rule 42.

12 THE COURT: But on different grounds.

13 MR. COLLINS: I thought they actually did reverse  
14 on the Rule 42(a)(3) grounds. So, as a result, that's sort  
15 of, given that *Moncier* is the only case out there, we  
16 believe it's, in terms of being prudent, that we've taken  
17 this position.

18 THE COURT: Well, that's fine. The motion to  
19 sever Count Ten is granted. Then this raises a practical  
20 question in my mind, which is, Count Eight sort of goes with  
21 Count Ten. Why not just sever Count Ten as well and then  
22 try those two separately?

23 MR. COLLINS: With regard to that point, your  
24 Honor, we don't actually, we respectfully have a different  
25 viewpoint, which is that the reason why we're agreeing to a

1 severance of Count Ten is statutory grounds, that we believe  
2 it's prudent pursuant to Rule 42(a)(3) which addresses that  
3 count on statutory grounds that it should be severed. Were  
4 there not to be Rule 42(a)(3), we would not be agreeing that  
5 there should be a severance of Count Ten. Especially in  
6 light of --

7 THE COURT: No, I understand. Your argument is  
8 both of the counts are properly joined under Rule 8. Count  
9 Ten is only leaving us because of Rule 42. But just as a  
10 practical matter, wouldn't it be sort of clean to send Count  
11 Eight off to another judge along with Count Ten?

12 MR. COLLINS: No, because as we argue in our  
13 brief, your Honor, even though Count Ten, even though we've  
14 agreed and your Honor has now ordered that Count Ten be  
15 severed, we take the firm position, your Honor, that the  
16 evidence supporting both counts, Eight and Count Ten, would  
17 be admissible in the trial of Mr. Bartok with regard to all  
18 the other counts. And since the evidence would be, since  
19 the evidence would be admissible and be heard before the  
20 jury, it simply doesn't make either sense from, in terms of  
21 judicial economy under Rule 14 or under Rule 8 since they're  
22 properly joined for Count Eight to be severed.

23 THE COURT: Let me ask you a legal question.  
24 Whether the evidence would be admissible even if the count  
25 were severed is obviously an important factor under Rule 14,

1 but under Rule 8 aren't you supposed to look at the  
2 character of the offenses and not the fact that it might or  
3 might not be admissible?

4 MR. COLLINS: Yes, your Honor. And I think, if  
5 you do look at both, if you look at the counts, clearly  
6 Count Eight is of the same or similar character to other  
7 counts that are in the Indictment, just looking at the 1001  
8 count, Count Eight charges that Mr. Bartok committed  
9 perjury, that he lied to the Court with regard to his assets  
10 in order to secure a CJA appointment. With regard to Count  
11 Six, your Honor, of S4, that alleges that Mr. Bartok made a  
12 false statement to the Bankruptcy Court, specifically he  
13 made a false statement to Judge Cecelia Morris. Clearly,  
14 just looking at those two counts alone, without the fact  
15 that essentially the purpose behind Count Eight is to commit  
16 a fraud, which is what a number of the counts address in S4,  
17 that count is, Count Eight is of the same or similar  
18 character. It's essentially --

19 THE COURT: It's a false statement.

20 MR. COLLINS: To the Court.

21 THE COURT: It's a false statement to a Court. I  
22 looked at the Government's cases, they all seem to involve  
23 perjury charges where, if perjury relates to the substantive  
24 counts at least to the extent that they involve the same  
25 entity. The *Werner* case, which is the one where the general

1 likeness comes in, it was a theft and it was a robbery, but  
2 it was from the same place and it was a place where the  
3 defendant worked. In *Ruiz*, it was a false loan application  
4 and perjury, but both arose from the defendant's operation  
5 of the same business. And in *Josephberg* it was a healthcare  
6 fraud, a nanny tax fraud and an income tax fraud, and the  
7 Court did say these are all dishonest acts to get money, but  
8 there was more. The healthcare fraud, as I read that case,  
9 involved falsely carrying the defendant's wife as an  
10 employee of a particular corporation so that she could get  
11 health coverage, and the income tax fraud involved hiding  
12 money in the same corporation. So there was some connection  
13 in that all the counts arose from the operation of the same  
14 entity. Here most of the counts arise from the operation of  
15 Revelations, but the false financial affidavit doesn't.

16 Are there cases where perjury is joined with other  
17 frauds or false statements where the only connection is  
18 really what we have here, which is a "but for" connection?  
19 Obviously but for the defendant's operation of Revelations,  
20 he wouldn't have been indicted, and but for being indicted  
21 he wouldn't have had to put in a financial affidavit. But  
22 it seems like the cases all had some connection beyond a  
23 "but for" connection or beyond just it was two lies or two  
24 frauds. It was two lies or two frauds that grew out of the  
25 same entity or the same business it seemed to me.

1 MR. COLLINS: Well, your Honor, the view that -- I  
2 understand your Honor's position. If I remember correctly,  
3 and I'm trying to find it now, one of the cases dealt with  
4 perjury concerning a bank, concerning a bank robbery. And  
5 here, actually, and I think there was the *Potamitis*.

6 THE COURT: That was where the perjury in the  
7 Grand Jury was to cover up the underlying crime.

8 MR. COLLINS: Yes, your Honor, but there's also  
9 that element here as well. Because, if you look at the  
10 affidavits, and part of the Government's proof with regard  
11 to Count Eight is that one of the things that Mr. Bartok  
12 lied about was the money that he actually earned from  
13 Revelations. In relying on the financial affidavit, he lies  
14 about what he earned during the preceding 12 months, which  
15 is relevant to the Government's case, because what  
16 Mr. Bartok was doing was, in the same manner that the  
17 conspirators with regard to the bankruptcy are trying to  
18 minimize or obfuscate what occurred previously, Mr. Bartok,  
19 in his affidavit, when he lies about how much money he  
20 earned during the previous 12 months, and there simply  
21 cannot be any dispute about that --

22 THE COURT: But you didn't charge that lie.  
23 You've charged two lies: One that he didn't have any cash  
24 on hand or money in savings or checking; and, two, that he  
25 lied about the property he owned. You haven't charged that

1 he lied about his income in the previous 12 months.

2 MR. COLLINS: Yes, your Honor. But with regard  
3 to, again, that goes to the evidence that's going to be  
4 admitted at trial, with regard to Mr. Bartok's accumulation  
5 of assets and with regard to his cash on hand, the same bank  
6 records that the government would be using to prove the  
7 assets that Mr. Bartok accumulated during the course of his  
8 fraud and the money that he gained on hand and how he  
9 disposed of it, that's the income from Revelations.

10 THE COURT: Right. But you didn't charge him  
11 about lying about his income. I mean, if you've got  
12 evidence that, you're going to prove that he took in gobs of  
13 money from this business and that he spent gobs of money.

14 MR. COLLINS: Yes.

15 THE COURT: That would not be admissible on Count  
16 Eight because Count Eight doesn't charge him with lying  
17 about what he took in, it charges him with lying about what  
18 he had on the day of the affidavit.

19 MR. COLLINS: Yes, your Honor.

20 THE COURT: So what he had on the day of the  
21 affidavit, unless you show that what he took in he still had  
22 on the day of the affidavit, I don't really follow it. The  
23 bank records that show he took gobs in and he spent gobs  
24 isn't going to prove what he had on hand on whatever the  
25 date was.



1 MR. COLLINS: March 15.

2 THE COURT: March 15, 2011. Right? I mean, it's  
3 two different -- if you had charged him with an additional  
4 lie on the financial affidavit in that he covered up income  
5 that he received in the previous 12 months from Revelations,  
6 your position would be stronger. But I don't see that.

7 MR. COLLINS: Well, I guess, your Honor, then we  
8 go back to clearly then under Rule 8 that Count Six and  
9 Count Eight of the same or similar character, they're lying  
10 to the Court.

11 THE COURT: I mean, I think you have even a  
12 stronger argument than that. I mean, Counts One through  
13 Four also involve lying to the Court because you've alleged  
14 that this whole scheme involved filing bankruptcies for  
15 clients that were full of false statements. False  
16 statements to Bankruptcy Courts are all over this case.

17 Is it enough that this is also a false statement  
18 to a Court as opposed to a false statement? I mean, there  
19 are cases where a defendant is charged with false statement  
20 to a bank and then a false statement to an investor and  
21 those get severed. Just because it's two dishonest things  
22 that the same guy allegedly did isn't enough to find they're  
23 a same or similar character.

24 Is the fact that here it's not just false  
25 statements to various people, it's false statement to the

1 Court enough to make it same or similar character?

2 MR. COLLINS: Well, it's even more specific, your  
3 Honor, than false statements to courts generally. We're not  
4 even talking about a false statements to a state court and a  
5 false statement to a federal court, we're talking about two  
6 false statements to United States Judges.

7 THE COURT: Well, only one was an Article III,  
8 Judge. I mean, I'm kidding. That would be slicing the  
9 onion very thin.

10 MR. COLLINS: I think the administrative office of  
11 US Courts covers both the Bankruptcy Court Judges and the  
12 District Court Judges. I think would approach it -- even if  
13 I don't succeed under the Constitution, I would approach it  
14 through that statutory regime, your Honor.

15 THE COURT: We both get our paychecks from the  
16 federal government.

17 I mean, I think this is between the extremes.  
18 It's not, you know, two random frauds that have nothing in  
19 common. False statements to courts are common to the two,  
20 but it's not the situation that other courts have found to  
21 pass muster under Rule 8 either where there was some  
22 connection between the false statement and the underlying  
23 crime either that the false statement was covering up that  
24 crime or the false statement arose from the operation of the  
25 same business. And Judge Robinson in the *Kerik* case, which

1 I printed, does a fairly thorough analysis, and he says, let  
2 me find it, he says that the government is always quoting  
3 *Ruiz* and arguing that, as long as it involves substantial  
4 alleged dishonesty, that's enough. But Judge Robinson  
5 points out that the charges in *Ruiz* were more closely  
6 regulated than those in the *Kerik* case because they arose  
7 out of business dealings with a particular company. And in  
8 the *Kerik* case he severed tax, this is painted with a  
9 broader brush than the facts warrant, but basically Judge  
10 Robinson severed personal tax machinations from honest  
11 services fraud, and he basically says, you know, the  
12 Indictment's a laundry list of illegal schemes and false  
13 statements, the charges aren't related to all the others by  
14 time, actors, places or subject matters. The lone common  
15 link is the defendant himself, like an unpleasant episode of  
16 *This is Your Life*.

17           So the fact that it's the same defendant and it's  
18 the same kind of bad behavior, in other words, dishonest  
19 behavior, is not enough. Here you've got a little more in  
20 that it's not just generally dishonest behavior you're  
21 alleging, it's dishonest behavior accomplished by making  
22 false statements to federal courts. So I think you're in a  
23 slightly stronger position than in *Kerik* where the false  
24 statements were made to City authorities, to the White  
25 House, to the IRS, but you're not in as strong a position as

1 you would be if there were some substantive relationship  
2 between the conduct. I mean, the false statements in Counts  
3 One through Four and Count Six and Count Seven also were  
4 false statements that the defendant is alleged to have  
5 engineered, although they were ostensibly made by the  
6 clients. And here the false statement is his. But aside  
7 from a "but for" connection, or, you know a connection you  
8 could have charged but you didn't, there isn't as much of a  
9 connection as in -- even as there was in *Josephberg* and that  
10 was I think pretty much the outer limits of what would be  
11 okay under *Ruiz*.

12 I also found a Seventh Circuit case called  
13 *Alexander*, which is even more of a stretch, this is not a  
14 good case for the defendant. It was reviewed under the  
15 plain error standard, which is not what I'm applying here,  
16 obviously, but in the *Alexander* case, which is 135 F.3d 470,  
17 the defendant had a business filing bankruptcies for people  
18 and there were four counts arising from false statements,  
19 and there are counts arising from his having defrauded his  
20 customers and made false statements to the Bankruptcy Court.  
21 Then there was a mail fraud count arising from a false  
22 insurance claim on the business's insurance where the guy  
23 falsely claimed that his business computer had been  
24 destroyed in an accident. There was a mail fraud claim  
25 arising from a false mortgage application for a building

1 that contained the defendant's apartment out of which he ran  
2 the business, and there were seven counts of bankruptcy  
3 fraud relating to the defendant's personal bankruptcy, and  
4 the Seventh Circuit said it was fine to have them all  
5 together, not just because it was dishonest behavior by the  
6 same guy, but they said, and I think this is a stretch, that  
7 all of these offenses were designed to enhance the resources  
8 of the filing business. So the mortgage fraud got the  
9 defendant the apartment out of which he ran the business.  
10 The bankruptcy fraud arose from the operation of the  
11 business. The insurance fraud was an attempt to get money  
12 for the business, I didn't really see that, it seemed like  
13 it was an attempt to get money, and the personal bankruptcy  
14 fraud, their argument was that, well, those false statements  
15 prevented foreclosure of the premises out of which he ran  
16 the business, which I think is weak, but which I think is  
17 stronger is that in his personal bankruptcy he made false  
18 statements that concealed the existence of the filing  
19 business.

20           So particularly the false mortgage application  
21 seemed like a real stretch to me, but it was under the plain  
22 error standard. I'm not under the plain error standard.  
23 And the Seventh Circuit in *Alexander* cited a bunch of  
24 out-of-circuit cases where the various frauds grew out of  
25 the same business, and they said, well, this all has to do

1 with the same business.

2 Can I say that here, Mr. Collins, can I say the  
3 financial affidavit was part of the business? I don't think  
4 I can. And do I have to?

5 MR. COLLINS: With regard to, related to running  
6 the business, your Honor, I would say, no, but you don't  
7 need to, our position under Rule 8 is that you don't need to  
8 find that his perjury, that his perjury was related to the  
9 operation of Revelations.

10 I understand your Honor's point. I mean,  
11 obviously, there are always going to be differences between  
12 different counts. Our position is that under *Ruiz*, as your  
13 Honor has cited, and with regard to it being of the same or  
14 similar character, that we honestly can see no difference  
15 between a lie to a United States District Judge during the  
16 course of a litigation and a lie to a United States  
17 Bankruptcy Judge during the course of litigation. I can't  
18 honestly see how those are not of the same or similar  
19 character. They strike the government as literally of the  
20 same offense, except one is charged under 1001 and one  
21 charged under 1623, both have essentially the same elements,  
22 with the exception that under perjury it's made under oath,  
23 while under a 1001 it's also a false statement and it's a  
24 statement that's material.

25 I mean, the only difference between the two, the

1 only difference between the two counts in this case is that  
2 1623 requires that it be under oath, which 1001 doesn't.  
3 Other than that, they're both false statements to federal  
4 judges in the same judicial district made during the course  
5 of litigation.

6 THE COURT: I mean, they're certainly of similar  
7 character in the colloquial sense, but it seems to me the  
8 case law, because similar character is sort of the thinnest  
9 read under Rule 8(a), tends to frown upon describing the  
10 offenses at such a general level of abstraction that, you  
11 know, they're similar, just because they involve dishonesty  
12 to make money or dishonesty to defraud, and they require  
13 something more than what *Ruiz* said, they required something  
14 more than substantial alleged dishonesty. Even *Ruiz* didn't  
15 say that that was enough. *Ruiz* said, the false loan  
16 application and the perjury before the Grand Jury were  
17 properly joined as offenses of similar character because  
18 both involved substantial alleged dishonesty and both arose  
19 from the defendant's activities through this particular  
20 entity called Alliance. The false loan applications were  
21 for projects that Alliance was attempting to do, and the  
22 perjury before the Grand Jury had to do with whether the  
23 state senate ethics committee had approved the defendant's  
24 activities in connection with that entity. So it wasn't  
25 just, even under *Ruiz*, substantial alleged dishonesty, it

1 was substantial alleged dishonesty and that the counts both  
2 arose from activities in connection with the same entity.

3 MR. COLLINS: Well, but I guess that brings us  
4 back to where we were before. I mean, essentially that goes  
5 back to your Honor's "but for." But for the individuals  
6 being involved in the bank robbery, they wouldn't be  
7 testifying before the Grand Jury.

8 THE COURT: Right, but it's more than that. The  
9 false testimony in the Grand Jury was designed the cover up  
10 the bank robbery. I mean, but for a million things. If  
11 Bank Robber One had been, not in the bar the night that Bank  
12 Robber Two was there, they never would have met and never  
13 would have done the bank robbery. You can do a "but for"  
14 analysis at a very general level of abstraction too.

15 Let me ask Ms. Attias, though: Isn't the  
16 government right?

17 I mean, these are false statements to the Court,  
18 how can that not be of similar character?

19 MS. ATTIAS: I was waiting to speak, Judge,  
20 because you were making all my arguments, and I thought I  
21 was doing quite well.

22 THE COURT: But the hardest one is the one I just  
23 asked you. How can I say they're not of similar character?  
24 It's lying to a Court, allegedly.

25 MS. ATTIAS: Judge, where I think you have to put



1 your focus is on what the alleged lies were really about  
2 really underneath. All the other lies alleged in the  
3 Indictment have to do with the business; the running of the  
4 business, the alleged lying to the Bankruptcy Judge herself  
5 was all about the running of the business, that's how the  
6 business allegedly ran. This was completely separate in  
7 time. This had a completely different purpose. This was  
8 for having had two different attorneys before. The  
9 allegations in this count have to do with getting a lawyer  
10 without spending more money having had a massive change,  
11 Mr. Bartok having gone through a massive financial change  
12 over the time that the case was pending.

13 So, even if you even look at the reasons, the  
14 potential reasons behind the alleged untruths, it shows how  
15 completely unrelated they are. Many of them, all of them in  
16 the Indictment allege, have to do with his making money.  
17 After he lost all that money during the course of the case,  
18 now he came to the point where he was applying to the Court  
19 for counsel that he didn't have to pay for, so that he  
20 wouldn't have to spend whatever he had left on new counsel.

21 So that's my answer to that, Judge. I don't think  
22 that they are related. I think that Mr. Collins's argument  
23 is way too simplified.

24 THE COURT: You know, I had a case years ago in  
25 which the defendant was charged with commercial loan fraud,

1 he made false statements to a bank in connection with a real  
2 estate project, and then, this is when I was on Team  
3 America, we learned that he had made false statements in  
4 connection with some personal loan applications and added  
5 those counts to the Indictment. And as I sit here, I can't  
6 remember if there was a severance motion, but since Judge  
7 Briccetti was representing the guy, I'm pretty sure there  
8 was, and Judge Parker, who is now on the Circuit and  
9 therefore we know is very smart, kept it all together. And  
10 I think it was a very simple argument: False statements to  
11 a bank to get a loan, it's of similar character, even though  
12 one was business and one was personal. So why isn't the  
13 same true here? False statements to a Court for the  
14 personal advantage even though one was business and one was  
15 personal.

16 MS. ATTIAS: Judge, they, of course, that's the  
17 underlying theme, is that they're all false statements to a  
18 Court for personal advantage. I don't know a client of mine  
19 ever in 20 and a half years didn't do something for his  
20 personal advantage, unless it happened to be a violent crime  
21 of passion. Other than that, I can't really remember any.

22 So I think that connection, just allegedly making  
23 false statements to benefit himself financially, whether he  
24 was not spending or making, I just --

25 THE COURT: Making false statements to a Court --

1 MS. ATTIAS: Right.

2 THE COURT: -- just like making false loan  
3 applications to a bank.

4 MS. ATTIAS: Judge, I think it's not enough. I  
5 obviously don't dispute that connection between the charges  
6 but I think it's not enough. And that brings us back to  
7 something you said at the very beginning of this morning's  
8 conference, which is, in terms of cleanly trying the  
9 underlying counts, this makes it potentially messy. Since  
10 there's going to have to be another trial on the contempt,  
11 then you know we're not even really wasting court resources  
12 if the two were tried together, and although the record  
13 could be cleared as much as possible so that it was clear to  
14 the jury that it was not this Court that he allegedly lied  
15 to, it's kind of hard to know that that's going to go really  
16 well and at some point -- I mean, I'm sure that, even if we  
17 just say "The Judge, The Judge, The Judge," they're going to  
18 be kind of wondering why the judge has no name, and I just  
19 think that on the most practical level, as long as there has  
20 to be another trial, why not spend another five hours on the  
21 perjury count and have one clean trial on the underlying  
22 crimes and a clean trial on the other count?

23 And I have to tell you that before we go much  
24 further, I just have to bring up one subject about dates of  
25 trials based on some new information I learned yesterday

1 morning and confirmed yesterday evening, and that sort of,  
2 the reason I bring it up now, as I stand here cringing, is I  
3 believe that we can still try a case on May 21, but I now,  
4 as of yesterday evening's confirmation of some information  
5 Mr. Collins shared with me yesterday morning, I do not  
6 believe that it can be the underlying crime portion of the  
7 case, and I'll tell you why.

8           Mr. Collins has been very cooperative, we've had a  
9 very good working relationship throughout the course of the  
10 very few months that I've had this case, and yesterday  
11 morning, just in a long conversation, amongst other things  
12 he said, by the way, do you know about those massive number  
13 of boxes from when Mr. Bartok's office was originally  
14 searched in 2010 before there were any criminal charges  
15 brought?

16           And I said, excuse me? No. Don't know anything  
17 about this.

18           Apparently when Inspector Marsh searched his  
19 office, they seized a large part of the contents of his  
20 office, files, anything down to phone messages, basically  
21 everything. Then David Wikstrom, Mr. Bartok's first  
22 attorney, arranged with the government to have everything  
23 copied at huge expense, in the area of \$10,000, in August of  
24 2010.

25           At first Mr. Collins thought, his memory, I'm glad

1 it was incorrect, there were 52 boxes. Mr. Turk tells me  
2 this morning there were 32 boxes.

3 THE COURT: Mr. Wikstrom had them copied?

4 MS. ATTIAS: Had them copied.

5 THE COURT: So where are they?

6 MS. ATTIAS: Fifteen boxes were returned to  
7 Mr. Bartok sometime in August of 2010, but as of this  
8 morning, Mr. Bartok, this is the first time when I went down  
9 to the Marshal's office since I spoke to Mr. Wikstrom last  
10 night at about eight o'clock, this morning when he came into  
11 the building at about 9:15 to 9:20, I went downstairs and  
12 spoke to him. He does not, at this time, have any idea  
13 where those boxes are. He does not have a clear memory of  
14 the boxes being returned. I have not yet had the  
15 opportunity to speak to Mrs. Bartok to see if she knows  
16 where the boxes are.

17 THE COURT: I'm confused. Mr. Wikstrom had 32  
18 boxes copied and he said he gave 15 to Mr. Bartok.

19 MS. ATTIAS: Yes.

20 THE COURT: Where are the other 17?

21 MS. ATTIAS: I don't know. What he told me last  
22 night on the phone is that there was a ton of material  
23 seized, and he returned some of it to Mr. Bartok. Now I do  
24 believe that there are two copies, and this is just from  
25 this morning speaking to Mr. Collins, Inspector Marsh may

1 have the originals that were seized and --

2 THE COURT: I hope he does.

3 MS. ATTIAS: And the government appears to have a  
4 copy in the basement of this building. So, whether or not I  
5 can locate those boxes -- make believe I can get them this  
6 afternoon, 32 boxes, even make believe it was 15 boxes, on  
7 top of what I'm dealing with now, Judge, makes for a very  
8 ineffective defense in five weeks.

9 THE COURT: Depends what's in them.

10 MS. ATTIAS: But how does one --

11 THE COURT: If 28 of them are clients who aren't  
12 going to be part of this case, could be files going back  
13 years that aren't covered by this case.

14 MS. ATTIAS: A lot of them could be absolute  
15 garbage, but until I look at them, I don't know. And if the  
16 government has them, I need to have them and look at them.  
17 So here's --

18 THE COURT: Well, look, you know my schedule.  
19 You've got a detained client. If we don't do this May 21,  
20 time I have put aside for a long time, I don't know when the  
21 hell we're going to be able to do it. If it's a three-day  
22 drug case, I can get somebody else to take it. Nobody see  
23 taking a three-week fraud case.

24 So, before freaking out, I think the first thing  
25 is somebody has to get you to those boxes. If they're in

1 this building or in Mr. Marsh's office, that should be  
2 doable as soon as you have the time.

3 And does Mr. Collins or Mr. Alberts have any idea  
4 what's in them?

5 MR. COLLINS: I do. So, just so I understand,  
6 have we moved away now from the severance argument to  
7 discovery issues or do I get to go back?

8 MS. ATTIAS: Well, I just want to --

9 THE COURT: You get to go back to. Well, let me  
10 just say, going back to severance, even if I severed Count  
11 Eight, I might very well let it in under 404(b). So, I  
12 don't know that the efficiency argument is furthered. I  
13 also don't know that I would let it in under 404(b), it  
14 would depend somewhat on what the defense is in this case,  
15 and I don't know what it is. But I don't want either side  
16 to think that even if I, that if I sever, that presages what  
17 I would do under 404(b).

18 Let us assume for the remainder of this severance  
19 argument that these boxes will end up being not important or  
20 something that you can get through in the next six weeks.

21 MS. ATTIAS: This is what begs the question. They  
22 may be nothing, but somebody has to look at them and  
23 somebody has to prepare this case for trial and somebody has  
24 to do all of the written submissions before trial, and you  
25 might notice that I am standing here alone at counsel table.

1 My downtown office appears to have some staffing  
2 complications, and all I can say about that is I am  
3 currently alone on this case.

4 THE COURT: No, I get that.

5 MS. ATTIAS: So even --

6 THE COURT: Let's finish talking about the  
7 severance, and we'll talk about the -- if I understand what  
8 you were going to propose, you were going to propose the  
9 Count Eight and Ten trial from May 21 and the big trial for  
10 some other time.

11 MS. ATTIAS: This is why we get along, Judge. One  
12 of the many reasons.

13 THE COURT: But is there anything more you want to  
14 say on the legal point of whether Count Eight is properly  
15 charged?

16 MS. ATTIAS: No, I think I said everything I have  
17 to.

18 THE COURT: Mr. Collins, do you want to say  
19 anything more about Count Eight?

20 MR. COLLINS: Very briefly, your Honor. I think  
21 one of the points was the one you alluded to, which is, I  
22 don't think there's any savings of judicial efficiency  
23 because we would strongly believe that, even if Count Eight  
24 was severed -- and still with regard to Count Ten, with  
25 regard to Count Ten, as I've made clear to Ms. Attias, our



1 intention is to offer that evidence under 404(b), as we set  
2 forth in the brief, and the same with regard to Count Ten --  
3 to Count Eight.

4 THE COURT: What is the your theory, the 404(b)  
5 theory?

6 MR. COLLINS: With regard to Count Eight or Count  
7 Ten?

8 THE COURT: Either.

9 MR. COLLINS: With regard to Count Eight, Count  
10 Eight is set forth in the brief is that my understanding, at  
11 least my understanding as of now, is that intent or  
12 knowledge or absence of mistake is going to be is a issue at  
13 trial and, therefore, as a result, the fact that, as charged  
14 in the Indictment, specifically as we've talked about  
15 previously that, with regard to Count Six, that Mr. Bartok  
16 made false statements to the Court, it's highly relevant  
17 that with regard to Count Eight that, as said beforehand, I  
18 don't mean to repeat myself, that there are false statements  
19 made to another federal judge.

20 And, in addition, going back to the only other  
21 point I want to cover with regard to Ms. Attias made,  
22 Ms. Attias seemed to draw a very fine line between that  
23 Mr. Bartok's frauds were for his personal advantage but  
24 Count Eight was for the minimization of payments.

25 THE COURT: I think she was saying it doesn't

1 matter, every fraud is to benefit the fraudster, so I  
2 shouldn't draw that distinction. I think that's what she  
3 was saying.

4 MR. COLLINS: But that's the point. And that goes  
5 to -- and not to say that Ms. Attias's actually made the  
6 Government's point, but in an indirect way she actually did  
7 because, again, they are two, they're both frauds.  
8 Mr. Bartok's initial frauds as charged in the Indictment,  
9 and a fraud upon the Bankruptcy Court and a fraud upon the  
10 Court in order to gain personal advantage.

11 THE COURT: That's clearly not enough. I know  
12 *Ruiz* uses that phrase, "substantial alleged dishonesty," but  
13 that is clearly not enough. Two unrelated frauds having in  
14 common only the defendant being the perpetrator I don't  
15 think are properly joined under Rule 8(a). There needs to  
16 be some additional connection. And the question in my  
17 mind -- even under *Ruiz*, that would not fly. Just like it  
18 didn't fly under *Kerik*.

19 The question is, does the fact that these frauds  
20 were perpetrated using the same means, false statements to  
21 federal courts, give you the something extra or does the  
22 something extra have to be what it was in *Ruiz* and *Werner*  
23 and *Josephberg* and the cases the defendant cites, which is  
24 the two frauds arose out of the same entity or the same  
25 scheme with some other connection, or is it enough that it's

1 the same kind of fraud, such as it was enough that it was a  
2 false statement to a bank for a commercial loan and a false  
3 statement to a different bank for a personal loan or that  
4 somebody committed income tax fraud by underreporting their  
5 income and they also did it by inflating their expenses?  
6 That's the question.

7 MR. COLLINS: Same kind of fraud committed against  
8 the same entity, the United States Courts, United States  
9 Judges, by the same individual. Rule 8 is not about drawing  
10 exceedingly fine lines, it's why the rule, it's why *Ruiz*  
11 uses the term "substantial alleged dishonesty" and Rule 8  
12 itself, the statutory language, is same or similar  
13 character.

14 Clearly, again, your Honor, if somebody was to, if  
15 somebody was to walk down Main Street in White Plains and  
16 they were to rob the Citibank across from the Wal-Mart on  
17 April 5th, today, and two months later they were to go one  
18 block away to rob the Chase Bank, which is a block away,  
19 it's the same crime, it's bank robbery, it's the same  
20 victim, it's the FDIC. It shouldn't make a difference that  
21 it's a different financial institution or that in one  
22 instance that the person may have claimed that they have a  
23 bomb, the defendant may have claimed they have a bomb or  
24 another instance he may have shown the toy pistol. Just  
25 because there are differences between the crimes committed

1 on different days, there's timing differences, in that  
2 instance, it's essentially the same crime, perhaps committed  
3 by a different means against the same type of entity. No  
4 different than what occurred here.

5 THE COURT: Do you think if you had the Madoff  
6 case and you learned that Madoff, in addition to everything  
7 else, was paying his nanny off the books, that you could  
8 join the nanny tax with the Ponzi scheme?

9 That's the sort of question a Second Circuit Judge  
10 would ask. I don't usually do that, but I'm actually  
11 curious to know the answer.

12 MR. COLLINS: It is, and I'm glad I'm neither  
13 Mr. Litt nor Ms. Baroni.

14 Well -- I'm sorry, but those are two -- the nanny,  
15 I'm sorry the nanny tax and the securities fraud is what  
16 you're --

17 MS. ATTIAS: Do you want me to draw you a picture?

18 MR. COLLINS: I understand your Honor's question  
19 but that's -- unfortunately, your Honor, while I understand  
20 the question and the hypothetical, to use an old phrase,  
21 that's not what's going on here.

22 THE COURT: All right, let me change it. Let me  
23 change it. You have Madoff, he's running a huge Ponzi  
24 scheme and he's also, for the employees of that business,  
25 he's not paying the proper payroll tax.

1 MR. COLLINS: Yes, because that was essentially,  
2 that was the same --

3 THE COURT: It's from the same company, right.

4 MR. COLLINS: That was the same, that's the case I  
5 tried before Judge Preska in which there was a bank fraud  
6 involving Tollman-Hundley hotels, and it turned out that the  
7 entity was committing tax fraud by not properly paying its  
8 payroll taxes, so I most assuredly say, yes.

9 THE COURT: Right. And our case is somewhere  
10 between the two examples I just raised; right? Because it's  
11 not 100 percent unrelated as in the first example in that it  
12 has the similarity -- well, I take it back. It's  
13 100 percent unrelated as in the first example in that the  
14 lie on the financial affidavit didn't further the business  
15 in the least, but there's a similarity in that here it is an  
16 unrelated lie but it is a lie involving -- it is a very  
17 similar, it has a very similar character in that it is a lie  
18 to a Court. So it kind of comes down to whether similar  
19 character means just the means of committing the offense or  
20 if it means the purpose of the offense. It's not all that  
21 clear.

22 MS. ATTIAS: Judge, I already sort of said this,  
23 but I think, as I was writing the motion, I saw that  
24 obviously the two counts felt quite different in terms of  
25 the severance argument, but if it's really not that clear,

1 then why muddy a trial? And I just don't see the practical  
2 purpose for going there, and I think that that's very  
3 important.

4 And, in fact, under Mr. Collins's advising the  
5 Court, and of course he and I have already begun to discuss  
6 this, that he'll be moving for the information to come in  
7 under 404(b) anyway, I'm not so sure it is admissible. It  
8 might be so closely related that it really shouldn't be  
9 admitted, but you know it might be too closely related and  
10 muddy things even further.

11 THE COURT: Well, that would cut the other way.

12 MR. COLLINS: I --

13 THE COURT: Look, even the *Werner* case, which is a  
14 very good case for the government because it sort of undid a  
15 lot of the damage that the *Halpert* case did to the  
16 government. Even in *Werner* they do say, similar character  
17 means a general likeness, but then they go on to say, while  
18 the stolen property offense and the robbery offense were of  
19 similar character, they say, well, they both arose from the  
20 defendant's position as an insider at the Lufthansa  
21 terminal, and the defendant was emboldened by his successful  
22 theft to get involved in the robbery. So even there where  
23 they're saying similar character just means general  
24 likeness, they go on to discuss the existence of a  
25 substantive connection beyond just the means. If it were

1 enough that both were property being taken, if it were  
2 enough to be of similar character, one was a robbery, one  
3 was a theft, property were being taken, they wouldn't have  
4 bothered saying both arose from a defendant being an insider  
5 who worked at the Lufthansa terminal.

6           And in *Ruiz*, if it was enough that the false loan  
7 application and the perjury both involved false statements,  
8 they wouldn't have said both involved false statements and  
9 arose from the operation of the same entity.

10           So although I agree that there's something bizarre  
11 about the notion that a false statement to the District  
12 Court and the false statement to the Bankruptcy Court  
13 wouldn't be of similar character, it seems like all the  
14 cases that discuss similar character regard it as being  
15 something more than just a similar means, they look for some  
16 substantive question, even that Seventh Circuit case,  
17 *Alexander*, they tied themselves in knots to say, well, the  
18 false statement on the mortgage application and the false  
19 statements in the bankruptcy kept him in the apartment out  
20 of which he was running the other scheme. If it was enough  
21 that they were false statement crimes, the Seventh Circuit  
22 wouldn't have had to tie itself up in knots.

23           So even though I think it's by no means clear, I'm  
24 going to grant the motion to sever Count Eight as well, and  
25 I will absolutely consider any 404(b) application, and so

1 this may end up having little practical effect; but I think  
2 under the law I have to look at Rule 8 and whether  
3 something's properly joined without considering whether it  
4 might be admissible under 404(b). I think it's similar  
5 enough to be admitted under 404(b), but I don't know that  
6 the standards under 404(b) and Rule 8(a) are the same. And  
7 I don't have a good enough feeling as to what the defense is  
8 going to be in this case to know whether I'll admit under  
9 404(b), and if I do, and if that's the right decision --  
10 well, if I had denied this motion, on appeal the government  
11 would argue, well, it would have come in under 404(b) anyway  
12 and it's harmless, but I don't know if it's coming in under  
13 404(b), and I'm not doing a harmless error analysis, I'm  
14 just looking at Rule 8. So that's my ruling.

15 I will add that the recusal motion the government  
16 consents to in part and consents to it for Count Ten. As to  
17 Count Eight, it's meritless. The government correctly sets  
18 forth the legal standards. My views and the comments to  
19 which defense counsel cites all arose from court  
20 proceedings. There's nothing extrajudicial that I know  
21 about Mr. Bartok. So what I have observed in Court is not a  
22 proper basis for recusal. And, in any event, I don't think  
23 any reasonable informed person would find my comments  
24 sufficient to raise significant doubt as to my impartiality  
25 given the record before me when I made the comments and the



1 fact that the Court of Appeals recently affirmed my ruling  
2 revoking Mr. Bartok's bail, and that they did that having  
3 reviewed the transcript and apparently not finding any  
4 problem, I think a reasonable person would not find that my  
5 action in revoking the bail or what I said about it to be  
6 evidence of bias or lack of impartiality.

7 As a practical matter, however, if Count Eight is  
8 going to be tried with Count Ten and Count Ten is going to  
9 be tried by another judge, it doesn't make sense, and that  
10 judge can't be me, it doesn't make sense to have separate  
11 trials on Count Eight and Count Ten. So it may end up being  
12 that Mr. Bartok gets another judge for both Counts Eight and  
13 Ten just because that's practical.

14 Now going back to discovery. Tell me what you  
15 know about these boxes, Mr. Collins.

16 MR. COLLINS: Yes, your Honor. The boxes, the  
17 boxes were first mentioned in the very first discovery  
18 letter, and as Ms. Attias says, they were copied by his  
19 prior counsel a couple generations ago. As to what has  
20 happened with Mr. Bartok's set, I rely upon what Ms. Attias  
21 says.

22 THE COURT: Let me interrupt one second.  
23 Mr. Wikstrom was retained?

24 MR. COLLINS: He was retained.

25 THE COURT: So he had this very expensive copying

1 job done and now we're not sure where the boxes are. That's  
2 great. Go ahead.

3 MR. COLLINS: I apologize, your Honor.

4 THE COURT: No, I interrupted you.

5 MR. COLLINS: I don't have any information on that  
6 other than what Ms. Attias has said.

7 We have the originals, as Ms. Attias indicated,  
8 and we also have our working copy, which is in the basement.  
9 And subject to both sides trying to get done what they need  
10 to get done, we would obviously make the working copies, the  
11 working copies available.

12 That being said, it's not our present intention to  
13 use -- we'll be using some documents, some of the documents,  
14 your Honor.

15 THE COURT: Can you give us a general idea of what  
16 those documents consist of?

17 MR. COLLINS: Customer files, bank records and  
18 court filings.

19 THE COURT: And have you identified for the  
20 defense what clients are going to be the subject of  
21 testimony at trial?

22 MR. COLLINS: Yes. We've identified, well, we've  
23 identified clients -- we've identified the individuals, all  
24 of the individuals in the Indictment.

25 THE COURT: And are you going to be proving up

1 clients beyond the ones discussed in the Indictment?

2 MR. COLLINS: We may be dealing, your Honor, with  
3 other filings that are problematic. As I've done with  
4 Ms. Attias, I've been very proactive in terms of identifying  
5 issues.

6 THE COURT: Well, if you, I mean, let's say there  
7 are, I'm making this up, I don't know, there are six clients  
8 identified in the Indictment; is that right?

9 MR. COLLINS: Eight.

10 THE COURT: Eight. All right.

11 MR. COLLINS: Seven and one potential client.

12 THE COURT: And she knows who those eight are?

13 MR. COLLINS: She does.

14 THE COURT: But if you're going to be proving up  
15 either additional clients or through a summary witness  
16 saying, I went through 100 files and in 66 of them I found  
17 X, you need to tell her those specifics as well if you  
18 expect her to be ready by May 21.

19 MR. COLLINS: We do expect summary testimony. We  
20 do expect summary testimony based upon the payment cards of  
21 Revelations showing the money that's going in, but obviously  
22 with regard to a summary witness, it's not only the charts  
23 but the underlying documents that we would have to mark. So  
24 we would be obviously letting her know that.

25 THE COURT: Well, I guess I'm a little confused

1 now. Are you going to be having some sort of summary  
2 witness who's going to talk about large numbers of clients?

3 MR. COLLINS: Not the filing details or  
4 Mr. Bartok's conversations with them, but with regard to  
5 what the payment cards show, what the business records of  
6 Revelations show as to what Revelations was taking in during  
7 specified periods of time.

8 THE COURT: Well, if you're not proving that there  
9 was anything fraudulent, let's say you have a chart with 200  
10 customers, if you're only proving that eight of them are  
11 frauds, then what's the relevance of the other 192?

12 MR. COLLINS: Because we expect there will be  
13 testimony from individuals that worked at Revelations.

14 THE COURT: That the whole thing, that everybody  
15 was a fraud, it was saturated with fraud?

16 MR. COLLINS: That it was saturated with fraud,  
17 your Honor.

18 THE COURT: And this evidence is going to come not  
19 from the individual client files but from some other payment  
20 records?

21 MR. COLLINS: Well, there will be the payment  
22 records. Revelations kept essentially index cards that  
23 showed the amount of money that individuals were paying for  
24 services both as an initial fee and as monthly, and as  
25 monthly installments until an individual was no longer with

1 Revelations.

2 THE COURT: And are those index cards in the  
3 individual client file?

4 MR. COLLINS: No.

5 THE COURT: So --

6 MR. COLLINS: They were kept, my understanding is  
7 they were kept separately essentially in a safe.

8 THE COURT: So Ms. Attias can just look at those  
9 underlying records and compare it to your chart, she doesn't  
10 need to go into the individual client files to do that?

11 MS. ATTIAS: Well, Judge, I mean, this brings  
12 me --

13 THE COURT: That doesn't mean that you wouldn't  
14 want to.

15 MR. COLLINS: But those, and just to go back, the  
16 payment cards have already been provided in discovery, so I  
17 don't think we're actually talking -- if we're still talking  
18 about the boxes, then I don't believe that we're actually  
19 talking about something that Ms. Attias has to investigate  
20 anew by going to the boxes because it's already part of the  
21 discovery provided.

22 THE COURT: But, you know, she's trying to do her  
23 homework and --

24 MR. COLLINS: Of course.

25 THE COURT: -- she thinks she needs to go through

1 the boxes.

2 Here's what I want to do. I'm extremely reluctant  
3 to move this trial just because --

4 MS. ATTIAS: Just because 32 boxes appeared  
5 yesterday?

6 THE COURT: Just because the next available time I  
7 have is a year from now, and I don't want Mr. Bartok sitting  
8 in the pokey for a year. And that's literally. Because I  
9 have a trial April 23, then I have this one. The moment  
10 this one is over, I have what is billed as an eight-week  
11 trial, maybe it will end up being shorter. The moment  
12 that's over, I have a one-week trial. Then I'm trying to  
13 take a week or two off. Then right after Labor Day, I have  
14 a four-week trial, immediately followed by a three-week  
15 trial, immediately followed by a five-week trial,  
16 immediately followed by a two-to-four month trial in January  
17 of 2013.

18 The only possibility I would have is, and those  
19 are all criminal except for a five-week civil trial in  
20 November, so if I had to, I would put this case in there.  
21 It's going to be very hard to find somebody who could try  
22 this case in my place, although, if need be, I will do it,  
23 but I'm not going to move anything yet.

24 The government should make the boxes available to  
25 Ms. Attias right away. And, Ms. Attias, as soon as you have

1 a moment, go down and look at those boxes. Maybe when you  
2 see them, you will conclude that there's really only three  
3 or four that are going to be relevant or that you don't need  
4 to go through the client file for every single, solitary  
5 client. But, if you come back and you say you do, we'll  
6 figure something out then.

7 So let's come back in whatever timeframe you think  
8 is reasonable for you to be able to tell me that you've  
9 flipped through those boxes and you have a sense of what's  
10 in them and what you need to do.

11 MS. ATTIAS: Judge, I am not working tomorrow and  
12 Monday, so we can perhaps, I don't know, I have another plea  
13 before you this afternoon, but perhaps, you know, for a hour  
14 I can start going downstairs now, and I can resume on  
15 Tuesday. I can probably report in to you just from within  
16 literally a hour downstairs in the basement just looking at  
17 them, opening up the first ten boxes, I can probably get  
18 some clue. If I can tell you by the middle of next week, if  
19 I'm back in the office on Tuesday, which I am, I can  
20 probably tell you by Wednesday.

21 THE COURT: I'm not here next week Wednesday  
22 through Friday, so what about --

23 MS. ATTIAS: Can I have just a second, Judge?

24 THE COURT: Yes.

25 (Counsel confer)

1           THE COURT: I was going to suggest also that maybe  
2 Mr. Burke could be your tour guide through the boxes since  
3 he seems to be the one who knows what's in them.

4           MS. ATTIAS: That would be lovely, Judge, and I  
5 don't have a plea till 2:45 in a case with you. I am  
6 willing to spend the next the hours looking at the boxes.

7           THE COURT: That would be great.

8           MS. ATTIAS: We can maybe put this on for second  
9 call. Believe me, if there's a way I can try this, I would  
10 like to get this done. I know that he's incarcerated, and  
11 everybody has been putting a lot of time in, but I need to  
12 do the right job.

13           THE COURT: I agree with everything you just said,  
14 and if it turns out that either I have to move my civil case  
15 for November or I have to find some saint of a senior judge  
16 or somebody to help me out, I will.

17           MS. ATTIAS: There was also that, of course, that  
18 little funky idea of trying the cases backwards. It might  
19 feel backwards, but perhaps it's not backwards, I don't  
20 know. But just another option. But I think that if I came  
21 back before you, either just before my plea at 2:45 or just  
22 after that, I could tell you where things stand.

23           THE COURT: Let me ask Ms. Cama what else we have  
24 this afternoon.

25           MR. COLLINS: Can I just go back? I'm not -- just



1 so I understand it, trying them in reverse actually doesn't  
2 involve --

3 THE COURT: Doesn't involve me.

4 MS. ATTIAS: Right.

5 MR. COLLINS: So I'm not sure it actually involves  
6 your schedule.

7 THE COURT: Right. Well, the government can think  
8 about whether it wants to try them backwards. I will leave  
9 it up to the government which set of charges it wants to go  
10 first.

11 All right. So why don't we reconvene at 3:15 and  
12 I'll get a better feel.

13 MR. COLLINS: Your Honor, I apologize,  
14 unfortunately, is it okay if just Mr. Alberts appears for  
15 the government?

16 THE COURT: Of course.

17 MR. COLLINS: Thank you. And we've had some time  
18 to contemplate your Honor's question, and our preference is  
19 the fraud trial go first.

20 THE COURT: I'm shocked.

21 MS. ATTIAS: Judge, so we've concluded all the  
22 business that we've taken up so far this morning?

23 THE COURT: Yes.

24 MS. ATTIAS: There's a little bit more.

25 THE COURT: Okay.

1 MS. ATTIAS: But, I'm sorry, before we do that, I  
2 was trying to understand your actual ruling on the recusal  
3 motion as to Count Eight. I understand everything you said  
4 about of course you can be impartial, I just didn't quite --  
5 I was thinking that I hadn't quite heard a decision I  
6 thought.

7 THE COURT: The recusal motion is denied. I don't  
8 think there's any legal basis for it. My views arise all  
9 from in-court proceedings, and if they didn't, I don't think  
10 my impartiality could reasonably be questioned; however, it  
11 sounds like everybody agrees Eight and Ten should be tried  
12 together, and Ten is going to be tried by somebody else.

13 So, as a practical matter, Eight will also be  
14 tried by somebody else, not because there's any legal  
15 requirement that that be done but just for the sake of  
16 efficiency.

17 MS. ATTIAS: That is what I thought I heard you  
18 say.

19 THE COURT: All right. Anything more?

20 MS. ATTIAS: Yes, Judge, I have left a message  
21 for -- there's the issue of the car sale.

22 THE COURT: Oh, the car, that's right. The last I  
23 heard, and we should make a record here.

24 Ms. Attias and I have actually spoken about the  
25 car and some difficulty she was having in getting the CJA

1 office to take -- since the check was made out to  
2 Mr. Bartok, my idea was to have him endorse it over to the  
3 Clerk of the Court. CJA people said they couldn't take a  
4 check like that. I asked if they would just this once, and  
5 it turns out they can take the check. That's where we left  
6 it.

7 Do they have the check?

8 MS. ATTIAS: They do not have the check, Judge.

9 THE COURT: Where is the check?

10 MS. ATTIAS: The check is on this table sitting  
11 two inches away from me.

12 THE COURT: And why is it still here?

13 MS. ATTIAS: Because it has yet been unsigned with  
14 that particular required endorsement over to the US Courts  
15 Southern District of New York, as Tracy Miller, the CJA  
16 clerk downtown, informed both your Honor and myself needed  
17 to be. I could not make it myself to Valhalla the other  
18 day, so my assistant went over there with the check.  
19 Mr. Bartok expressed some displeasure at having to sign the  
20 check in such a manner.

21 I spoke to him this morning in the pens, and I do  
22 not believe he is going to sign that check. So I  
23 therefore --

24 THE COURT: Is there a reason?

25 MS. ATTIAS: None that I can express to your

1 Honor.

2 THE COURT: Does Mr. Bartok understand that that  
3 refusal is likely to result in another contempt of court  
4 charge?

5 MS. ATTIAS: I haven't had that exact discussion  
6 with him, but I do believe that he understands that that is  
7 a possibility.

8 So, in an effort to practically get to the  
9 solution required by your Honor's order, I have just before  
10 I came up here this morning, I left a message for the car  
11 dealer who I've been dealing with who has been very  
12 cooperative, asking him to look into the possibility of  
13 cutting a new check made out to the party that your Honor  
14 has ordered that the money be paid to, that being the US  
15 Courts, Southern District of New York.

16 The reason it was made, I actually had asked him  
17 to do that initially, the reason it was made out to  
18 Mr. Bartok was because Mr. Bartok was the owner of the car  
19 and that's what the business needed to do.

20 My suggestion to him in that phone message, and  
21 I'll find out what happens when I get downstairs, is perhaps  
22 an order of the Court would be helpful in his boss's  
23 decision about who to cut the check to.

24 THE COURT: I'm going to order something, but it's  
25 going to be different. When we come back at 3:15, if that

1 check is not signed, I'm going to order Mr. Bartok to sign  
2 it. If he doesn't, he'll be in contempt of my order.

3 Now he's already in jail, so throwing him in jail  
4 isn't going to have any coercive effect, and he doesn't have  
5 any money, apparently, so fining him isn't going to have any  
6 coercive effect, but I will hear from either side about what  
7 punishment I could impose that might have some effect, and  
8 it is certainly a matter that I would refer to the  
9 US Attorney for prosecution if I make such an order and in  
10 my presence Mr. Bartok refuses to sign it.

11 They obviously can charge him if they choose, but  
12 you know, if he were at liberty, I would just throw him in  
13 jail until he signed it. But throwing him in jail won't do  
14 any good here, obviously.

15 So I'll take the Government's advice on what sort  
16 of sanction might make sense if Mr. Bartok refused. But,  
17 when we meet later, I'm going to order him to endorse the  
18 check as described and if he doesn't --

19 MS. ATTIAS: Judge, I don't think Mr. Collins is  
20 going to need to do his research. Mr. Bartok is endorsing  
21 the check right now.

22 THE COURT: That is wise.

23 MS. ATTIAS: After he signs his name, Judge, right  
24 in front of him I'm going to write out, which I did not want  
25 to do before it was signed, I will write in the endorsement

1 "Pay to the Order of," as Ms. Miller --

2 THE COURT: I think his signature needs to be  
3 below that writing, so I don't know where he signed the  
4 check, but he can sign it again below that writing, if need  
5 be.

6 MS. ATTIAS: You know, so far in this case I've  
7 been a car dealer and now I'm a banker. So can I have a  
8 second, please just to take a look at this?

9 THE COURT: Sure.

10 MS. ATTIAS: I'm going to hand write it in, I'm  
11 going to have him sign it again in two places.

12 THE COURT: Sounds good.

13 (Pause)

14 MS. ATTIAS: Your Honor, I am now prepared to put  
15 the proverbial check in the mail.

16 THE COURT: Excellent. Glad that issue is off the  
17 table. The only dangling issue with respect to the money is  
18 whether Mr. Till has, in fact, submitted his CJA voucher.

19 Do you know?

20 MS. ATTIAS: I've been in touch with him. I think  
21 that what happened was that when he was asked by your Honor  
22 to give a reckoning of the time that he had spent on the  
23 case, he believed that was the CJA bill, from everything I  
24 can see.

25 THE COURT: So is he now going to --

1 MS. ATTIAS: So his office is going to be dealing  
2 with that.

3 THE COURT: So he'll be submitting a voucher.

4 MS. ATTIAS: As I understand, Judge.

5 THE COURT: All right. We will reconvene at 3:15,  
6 and Ms. Attias, don't, I know you won't, but don't, don't  
7 pull your punches about what you think the significance of  
8 these boxes is just because it's a headache for me.

9 MS. ATTIAS: I have no hesitation doing it.

10 THE COURT: If you need the time, you tell me.

11 MS. ATTIAS: Thank you. You can join me in my  
12 headache. I bought a new bottle of aspirin in my office.

13 MR. COLLINS: Before we actually go, I actually  
14 have some minor housekeeping issues.

15 THE COURT: Okay. Also I should put on the record  
16 that the co-defendants have been given permission not to  
17 attend since the motions that were on for today involved the  
18 S4 Indictment in which they were not named.

19 Okay, go ahead, Mr. Collins.

20 MR. COLLINS: I think actually Ms. Attias realized  
21 she had one more issue.

22 THE COURT: Oh, okay.

23 MS. ATTIAS: Back a while ago, when I first came  
24 into the case in December, a question came up as to during  
25 the filing of the last CJA-23 about whether or not

1 Mr. Bartok was yet receiving Social Security benefits.  
2 Afterward I did speak to his office, and I learned that the  
3 checks had just started to come over the last couple of  
4 months. So your Honor asked me to look into my office  
5 policy about whether we would be looking to recover part of  
6 the cost of representation through Social Security, and the  
7 answer is, no, we are absolutely not looking to take away  
8 his Social Security money. Not a penny of it.

9 THE COURT: How much is the Social Security?

10 MS. ATTIAS: 1350 to \$1,400 a month, Judge.

11 THE COURT: And is that his wife's only source of  
12 income?

13 MS. ATTIAS: She is working for two different  
14 stores making I think minimum wage and working very long  
15 hours.

16 THE COURT: Like in retail?

17 MS. ATTIAS: Yes. Yes.

18 THE COURT: All right. I don't see any need to  
19 order anything to be done with the \$1,400 a month.

20 Does the government disagree?

21 MR. COLLINS: No.

22 THE COURT: All right. Anything else from  
23 defendant?

24 MS. ATTIAS: No, Judge.

25 THE COURT: Mr. Collins.



1 MR. COLLINS: Yes, your Honor, we would ask that  
2 your Honor set an acceptance of responsibility date.

3 THE COURT: Well, I'll do that when we have a  
4 trial date.

5 MR. COLLINS: I thought we had a trial date of  
6 May 21. It hasn't been adjourned yet.

7 THE COURT: We do, but it might change at 3:15.  
8 So, if it doesn't, I will set an acceptance date at 3:15.

9 MR. COLLINS: Okay. While I'm here, though,  
10 proceeding on the assumption we are going to trial on  
11 May 21, can I address two small issues?

12 THE COURT: Okay.

13 MR. COLLINS: The first is, it's my understanding  
14 that your Honor often does not need sort of standard  
15 requests to charge on standard charges.

16 THE COURT: I don't, well, I mean, for the  
17 offenses, yes, but you could just tell me, I want the charge  
18 on similar acts, I want the charge on reasonable doubt. I  
19 don't need you to give me proposals on anything except the  
20 substantive offenses and anything out of the ordinary you  
21 would be asking for.

22 MR. COLLINS: Okay.

23 MS. ATTIAS: Judge, in that regard, would you,  
24 depending when the trial date is, of course, would I be able  
25 to have access to whatever reasonable doubt charge you give

1 and maybe a couple of particulars I'm not thinking of right  
2 now?

3 THE COURT: Sure, like from a previous trial?

4 MS. ATTIAS: Yes. If you give a standard  
5 reasonable doubt charge.

6 THE COURT: I think I give the one -- I think it's  
7 right out of *Sand*, but, yes, that's no problem, you can ask  
8 Mr. Levy.

9 MS. ATTIAS: Great.

10 MR. COLLINS: And, also, your Honor, does your  
11 Honor normally sit from 9:30 to 2:00?

12 THE COURT: Well, when it's a trial of this  
13 length, I usually sit, I usually have the jury from 9:30 to  
14 2:30, and I have counsel, if they have any issues, come at  
15 9:00.

16 Let me ask Alice, though, are we planning to do  
17 that for this trial? Have you been putting things on, other  
18 things from 3:30 to 5:00 starting May 21?

19 THE CLERK: No, I've been doing the upside-down,  
20 Judge, 9:30 to 2:30 trial.

21 THE COURT: So that is what we will do. So if  
22 counsel have any issues, we do it between 9:00 and 9:30, and  
23 we do 9:30 to 2:30 with a 30-minute break at like, you know,  
24 what is it, like 11:45, 11:45, and I tell them to bring a  
25 little something. They shouldn't get starving and lose

1 their concentration, and I recommend the same for the  
2 lawyers.

3           Luckily you all live in the building, so you can  
4 go back to your offices to nosh. I've had to let lawyers  
5 nosh a little something in the courtroom, which makes the  
6 cleaning guys very anxious.

7           If I do have to find somebody else to try this  
8 case, it could be in New York City, but we'll cross that  
9 bridge when we come to it.

10           Anything else?

11           MR. COLLINS: No, I think we're ready to take our  
12 field trip with Ms. Attias.

13           THE COURT: All right. Thank you, everybody. See  
14 you at 3:15.

15           (Recess taken at 11:02 a.m. until 3:25 p.m.)

16           THE CLERK: United States against Andrew Bartok.

17           THE COURT: All right. Good afternoon everyone,  
18 again. Mr. Alberts, Mr. Collins, Inspector Marsh,  
19 Mr. Burke, Ms. Attias, Ms. Katz and Mr. Bartok.

20           Ms. Attias, why don't you fill me in on what you  
21 found when you went to see those boxes.

22           MS. ATTIAS: I found 32 boxes with 78,504  
23 documents.

24           THE COURT: Oh, dear.

25           MS. ATTIAS: Happily we've been through one box.

1 We just picked a random box off the shelf and that box was a  
2 copy of newspapers, full copies of newspapers that had been  
3 in Mr. Bartok's office. So perhaps we'll get pretty lucky.  
4 Although I have seen and I will be waiting for a copy, there  
5 is apparently a quite detailed index of what's in those  
6 78,000 and a half documents, and it does not look pretty.  
7 There are many, many, many, many documents that I'm going to  
8 have to actually look at, and Ms. Katz will be starting  
9 there, but the absolute truth of it, Judge, in all  
10 seriousness is I cannot imagine competently and effectively  
11 trying this case with that unfortunate discovery and what's  
12 in the basement of the building, I cannot imagine trying  
13 this in May.

14           So, of course, part of my conversation with  
15 Mr. Bartok and Ms. Katz was downstairs with him while we  
16 were just doing the last case, was that whether he would be  
17 okay with the additional time it would take for me to fully  
18 prep his case because, of course, he is incarcerated, and he  
19 did hear this morning that the next possible date we were  
20 looking at was probably November.

21           THE COURT: I have an alternative.

22           MS. ATTIAS: Okay.

23           THE COURT: Actually, I took the opportunity of  
24 the interregnum between part one and part two of this  
25 conference to inquire whether the eight-week trial currently

1 set for June 11 was really going to be eight weeks, and I  
2 was told that it is likely to be no more than six. I guess  
3 the government is expecting some dispositions. So I can do  
4 this trial July 23, if you guys can do it.

5 I have another case set for August 6, but if that  
6 doesn't go away, I should be able to find somebody to do  
7 that one, because that's a short one. So how is July 23?

8 MS. ATTIAS: Judge, I actually have two weeks of  
9 vacation scheduled immediately before then with my various  
10 offsprings' schedules that was what we had sort of written  
11 in stone a while ago.

12 THE COURT: We could try July 23 and just get all  
13 the pretrial stuff out of the way the first week in July.

14 MS. ATTIAS: I don't think that I can take  
15 vacation for the two weeks before trial.

16 THE COURT: Well you can pretend the trial's  
17 July 9 and get all ready and then go. I mean, I hate to  
18 have Mr. Bartok have to wait four months because of vacation  
19 schedules. I mean, look, I know it's not easy to go from  
20 vacation mode right into trial mode, but if we got all the  
21 pretrial stuff out of the way by July 6, then you could take  
22 your two weeks and we can start -- excuse me, I don't mean  
23 July 6, I mean June 29. You're going to be away the weeks  
24 of the 2nd and the 9th. No, no, I'm backwards, I'm sorry.  
25 Go back to what I was saying. If we started the 23rd, we

1 could just get all the pretrial stuff out of the way by  
2 July 6 and you would have the weeks of the 9th and the 16th  
3 for your vacation. I understand it's not ideal, but if you  
4 are actually in the building July 23, I hate to put this off  
5 till November.

6 MS. ATTIAS: I hear what you're saying, Judge. It  
7 puts me into an almost impossible personal situation, and I  
8 will just tell you that the two weeks before my vacation,  
9 Ms. Brody is out of the office and I'm alone in the office  
10 for two weeks staffing the entire courthouse.

11 THE COURT: Well, somebody from the big city will  
12 come and help.

13 MS. ATTIAS: I'm sure.

14 THE COURT: They'll have to, because you're going  
15 to be busy prepping for trial.

16 Look, what I'm proposing is we're just going to  
17 pretend like the weeks of the 9th and the 16th don't exist.  
18 We're going to get completely ready to go by July 6 and then  
19 we're just not going to start till the 23rd.

20 MS. ATTIAS: I'm sorry, I just noticed that we put  
21 a sentencing on for that week ten minutes ago. I'm sorry,  
22 I'm not thinking clearly.

23 THE COURT: That's fine.

24 THE CLERK: We'll finish up at 2:30.

25 THE COURT: We'll finish the trial at 2:30 and

1 do --

2 MS. ATTIAS: No, no, during the week that I'm out.  
3 During one of my out weeks.

4 So it was either start July 23 or start July 23;  
5 those are the two options?

6 THE COURT: That's kind of where I'm at. And I  
7 don't want to ruin your vacation, but I feel like, if we get  
8 everything, everybody is all set to go by July 6, then you  
9 go, you take your vacation and we'll start picking a jury  
10 the 23rd.

11 MS. ATTIAS: Could we step up to sidebar for a  
12 minute, please?

13 THE COURT: Yes.

14 (Discussion at sidebar off the record)

15 THE COURT: All right. We are back on the record,  
16 and although I hate to mess with Ms. Attias's plans, I  
17 think, sad to say, it is the right thing to do given the  
18 length of time that Mr. Bartok would otherwise have to wait.

19 So, we will have jury selection and trial July 23,  
20 but we're going to have all the pretrial litigation  
21 completed by July 6.

22 So let me ask Ms. Cama for a date for a final  
23 pretrial conference the week of July 2, hopefully the jury  
24 will have my previous case by then.

25 THE CLERK: July 5, 10 a.m.

1           THE COURT: Yes. I think we could be reasonably  
2 confident that the jury will -- wait, hold on. I don't  
3 think the jury will have the case by then, we better do  
4 it --

5           THE CLERK: Want to do it 3:30?

6           THE COURT: Yes, 3:30 p.m.

7           THE CLERK: 3:30. July 5.

8           THE COURT: That will be our final pretrial  
9 conference. Now let's work backwards from the dates I had  
10 previously set. I had previously said the government was  
11 going to turn over 3500 May 14, which is a week ahead.  
12 Because of Ms. Attias's vacation, it will be three weeks  
13 ahead. That will be July 2. Government exhibits is going  
14 to be a week before that, which would be June 25. June 14  
15 for motions *in limine* and June 21 for opposition and  
16 requests to charge and *voir dire* questions also June 21.

17           We'll exclude the time between now and July 23  
18 under the Speedy Trial Act. I find the ends of justice  
19 served by the exclusion outweigh the best interests of the  
20 public and the defendant in a speedy trial because it will  
21 enable Ms. Attias to be prepared and will give her time,  
22 with the help of Ms. Katz, to review not newly discovered  
23 but newly appreciated 32 boxes. The government has  
24 represented that it will provide an index of the boxes and  
25 be of whatever assistance it can be in streamlining that



1 process.

2 Anything else we ought to do now?

3 MR. ALBERTS: One thing I just wanted to clarify  
4 for the record, I know that Ms. Attias appreciates this, but  
5 the index that we're providing to her is actually an index  
6 of the cabinets that were searched at the original location.  
7 We understand that they correspondence to the boxes, but  
8 they don't, on the index itself, it doesn't identify what  
9 box it goes to. The first step in locating them is going to  
10 be matching up the inventories with the boxes. So it's not  
11 technically an inventory of the boxes themselves as we  
12 determined this morning. But our understanding is it should  
13 be a matter of opening the box and finding which index the  
14 box corresponds to.

15 THE COURT: Mr. Burke is waving. It sounds like  
16 maybe he and Ms. Attias or he and Ms. Katz --

17 MS. ATTIAS: Can we go off for a second?

18 THE COURT: Let me finish my sentence. Will be  
19 able to put two and two together.

20 (Counsel confer)

21 MR. ALBERTS: Mr. Burke just wanted to make sure  
22 that you understood that the items that we originally or the  
23 postal agents originally seized they were copied by a  
24 third-party vendor. We're not sure how they did it. So the  
25 inventory we have is what Postal seized. We assume they

1 copied it in some rational manner, but we have never gone  
2 through the boxes to confirm that they correspond to the  
3 index that they have. That's an assumption.

4 THE COURT: Maybe Ms. Attias is going to find the  
5 smoking gun in there that you guys haven't found or whatever  
6 the opposite of a smoking gun is.

7 MS. ATTIAS: Or shoot myself with it. Shoot  
8 myself with a smoking gun.

9 THE COURT: I think we all understand what the  
10 inventory is, an inventory of what was seized at the sight  
11 of the search warrant, it's not an inventory of what's in  
12 the boxes, but we are hopeful the boxes bear some rational  
13 relationship to where they were seized from and it wasn't  
14 just a 52 pick-up at the third-party vendor.

15 And, Mr. Alberts, I know I'm messing with your  
16 trial schedule, but maybe you can do the July 9 one and give  
17 away the July 16 or something. But this case being a longer  
18 and more complicated one, I'm sorry that I had to  
19 inconvenience both sides a little bit to get it tried in  
20 some sort of reasonable timeframe, but with Mr. Bartok being  
21 detained, this seems like it's the only real way to do it.

22 Anything more we should do now?

23 MS. ATTIAS: Judge, just one piece of business. I  
24 did have a discussion with Mr. Collins where I had been  
25 looking at the index of the Bates stamped materials that I

1 have been given and the index goes through, the Government's  
2 index, and they've been, they have shared it with me and  
3 prior counsel, goes through about 29,000, but the documents  
4 go through about 36,000.

5 So, really?

6 MR. COLLINS: 29? I apologize, your Honor, I  
7 thought she only needed from September on.

8 MS. ATTIAS: I'm missing 29,000 to 32,000  
9 something.

10 MR. COLLINS: I can fix that, but obviously we're  
11 trying to, as the Court noted, we're trying to streamline  
12 the process as much as possible. So I misunderstood the  
13 period of time that Ms. Attias needed the index --

14 MS. ATTIAS: However --

15 MR. COLLINS: -- for. So I need to give her  
16 probably a couple more pages.

17 THE COURT: Couple more thousand pages.

18 MS. ATTIAS: But we're playing very nicely so far.

19 THE COURT: You seem to be working and playing  
20 very nicely together, and I'm sure the Government's not  
21 holding anything back. So I don't foresee you needing my  
22 help with any further discovery issues, but if you do, you  
23 know where to find me.

24 MR. COLLINS: And for the record, your Honor,  
25 we're also turning over the document, the boxes inventory

1 which is Bates stamped Index 1 through Index 67 for the  
2 record.

3 THE COURT: That's the search warrant index and  
4 not the box index.

5 MR. ALBERTS: Correct, your Honor.

6 MS. ATTIAS: Correct.

7 THE COURT: Okay. Anything else?

8 MS. ATTIAS: That's plenty.

9 THE COURT: Okay. Thank you folks.

10 (Proceedings concluded at 3:46 p.m.)

11 C E R T I F I C A T E

12 I, Angela A. O'Donnell, certify that the foregoing is a  
13 correct transcript from the record of proceedings in the  
14 above-entitled matter.

15 -----  
16 Angela A. O'Donnell, RPR, Official Court Reporter

17 United States District Court, Southern District of New York  
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